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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,647	07/07/2001	Dale R. Lovercheck	ANAL-VIT	6584

7590 03/24/2004

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EXAMINER	
HUI, SAN MING R	

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/900,647	LOVERCHECK, DALE R.	
	Examiner	Art Unit	
	San-ming Hui	1617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.☒ The proposed amendment(s) will not be entered because:

(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ they raise the issue of new matter (see Note below);

(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: *See Continuation Sheet*.

3.☐ Applicant's reply has overcome the following rejection(s): _____.

4.☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5.☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6.☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7.☒ For purposes of Appeal, the proposed amendment(s) a)☒ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: *None*.

Claim(s) objected to: *None*.

Claim(s) rejected: *26-30,33-35,37-46,48,50-54,56,59-61,64-69,71-84,86,87 and 91-94*.

Claim(s) withdrawn from consideration: *49, 55, 57, 58, 62, 63, 70, 85, and 88-90*.

8.☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9.☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____

10.☐ Other: _____

SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

Continuation of 2. NOTE: The newly added claims changes the scope of the invention and therefore would not be entered. The newly added claims now claim a composition of claim 67 in an oral dosage form. Such limitation is not claimed before.

Continuation of 5. does NOT place the application in condition for allowance because: The outstanding rejection under 35 USC 112 will remain as the proposed amendments filed March 1, 2004 will not be entered. Applicant's rebuttal arguments filed March 1, 2004 averring major commercial pain relievers containing inert minerals but do not indicate them as supplementing nutrition. Further, applicant argues that the law has not made necessary the inclusion of indications for supplementing nutrition by minerals in major commercial pain relievers. The arguments have been considered, but are not found persuasive. The law mandates as nutrition supplement product to include the recommended daily value of vitamin C, the elected compound, of the food product on the package label. It is not clear how the arguments are relevant to the rejections. Firstly, the arguments are drawn to non-elected compounds which considered moot. Secondly, whether or not the pain reliever products (Examiner note: not nutrition product) put forth the information about the inert ingredients does not obviate putting such information in the label.
Applicant's arguments filed March 1, 2004 with regard to In re Miller and In re Gulack have been considered, but are not found persuasive Applicant argues that "Applicant's invention provides indications indicating the nutrition supplementing function of the unit dose of the discomfort relieving composition. The prior art does not indicate this function. So, indications indicating supplementing nutrition should be given patentable weight as they are functionally related to the unit dose of the discomfort reliever in the enclosure". The arguments are not found persuasive. The herein claimed composition is capable of providing herein claimed function regardless of what is printed in the package insert and/or such function being taught by the prior art.
Applicant's arguments filed March 1 averring the presence of superior results have been considered, but are not found persuasive because there is no data for the examiner to evaluation whether superior results are indeed present.
No unanswered arguments are seen to be present herein..